HE APPELLATE COURT OF COOK COUNTY, ILL.

RENDERS A SWEEPING OPINION ON

The Closed Shop

CALLS IT

A TRUST," IN RESTRAINT OF TRADE, AND AN ILLEGAL MONOPOLY.

CONTRACTS TO HIRE ONLY UNION LABOR ARE CRIMINAL COMPACTS, MAKING EMPLOYERS AS WELL AS EMPLOYES LIABLE TO IMPRISONMENT — THE FREEDOM OF NON-UNION MEN IS UPHELD.

Hits Closed Shop.

Union labor's restrictions excluding the nonunion workman from "unionized" factories, stores or workshops have been branded as outlaw regulations in an epoch-making opinion handed down last week in the appellate court of Cook county. In the opinion, which was written by Judge Adams, with Judges Windes and Ball concurring, the "open shop" for which employers have been contending is vindicated and upheld, while its antithesis and "rival," the "closed shop," enforced by the unions, is permanently put outside the breastworks of legality, as contravening and abridging the contract rights guaranteed by common law and the laws and constitution of the state of Illinois.

In the important matter of contract rights the decision is the most sweeping imaginable. It holds that the "closed shop" agreements exacted from employers by labor unions constitute an illegal infringement of contract rights, and that the provision in such agreements binding an employer to hire none but members of a labor union is an illegal abridgement of liberty, discriminating in favor of one class of working people and excluding all others.

A startling phase of the decision is that it puts into the hands of the nonunion man, should he care to avail himself of the privilege, one of the most powerful weapons in the law's great armory. This formidable weapon is found in the taint of "criminality" which the decision attributes to the conduct of the parties contracting to maintain or establish the "closed shop."

The employer who signs the closed-shop contract, as

well as the labor union which procures his signature by threats of strikes or in other ways, is in this opinion held to be amenable to the criminal laws for conspiring to injure the "property rights" of a workman in his labor.

"If in the future any employer signs a closed-shop agreement with union or non-union workers," said one of the leading lawyers in the case, "such employer will do so with the full knowledge that he is laying himself liable to the criminal as well as the civil code, and that any nonunion or union workman excluded under the signed agreement has a double-edged weapon of the law with which to enforce his right to be free from the handicap of a conspiracy of discrimination when he seeks employment in any workshop, store, factory or other place of business."

It will even be a crime to submit a closed-shop agreement in the future to an employer for his signature. For it is itself a crime to ask anybody to commit a crime.

IS CLOSED SHOP CRIMINAL?

From this point of view the decision may be regarded as putting the ban of criminality as well as illegality upon all the closed-shop agreements actually obtained or vainly demanded by members of labor unions from their employers. Should the employer be able to show that he signed the closed-shop contract under the compulsion of a threatened strike he may be able to escape liability. But in every case where he enters into the exclusive agreement voluntarily the employer is likely to be adjudged equally as guilty under the law as the labor union members or officials at whose solicitation he executes the illegal contract.

Contracts or agreements for the maintenance of the "closed shop" are therefore merely so much worthless paper. From the point of view of law and constitutional guarantees they are even worse than worthless. It might be that the very act of circulating them would be construed to be a crime, and it certainly could not be a very

safe or comfortable thing for a walking delegate or other labor leader to be caught with a supply of them in his pockets. Mere possession of them might not be deemed a crime, but should any of the documents have a bona fide signature a good deal of trouble might follow at the hands of anybody who should care to put the machinery of the courts in motion.

Another remarkable feature of the ruling is that under its terms all the closed-shop contracts wrung from employers under duress or threats of strikes and other troubles, are obviously rendered null and void. Employers cannot be held by them to the maintenance of the closed shops promised. The agreements have no binding force in law, the employer incurs no legal obligation under them, the performance of none of the restrictive regulations will be enforced by a court and the members of the labor unions secure no legal rights or advantage from the employer's signature.

UNIONS WORSE OFF THAN BEFORE.

What is more, it even seems that union workers who have wrung a closed-shop agreement from an employer are really worse off for having obtained it. For in the event that they strike to enforce its terms they incur an additional responsibility under the criminal laws—an additional responsibility that would not exist if the illegal contract had not been obtained.

It is likely, therefore, that this momentous decision will be of more far-reaching effect than is yet dreamed of either by the union workers or the employers. How it can fail to influence the employers is not an easy thing to reason out. Almost without a doubt it will "stiffen their backbones" in the fight they have been making for "the open shop." But what is even more significant is that the decision—should it be upheld, as seems certain, in the supreme tribunals of the state or nation—is practically certain to result in the complete abrogation of the "closed-shop" contracts between employers and employes, as neither of the traditional parties to such contracts will

care to place themselves in the power of the criminal prosecutors.

In the true and literal sense the death knell of the closed shop has, therefore, been sounded in Illinois. Indictment and criminal trials and convictions of the parties to such agreements, whether employers or employes, might be sought and obtained at any time in the local courts, and it is hardly probable that any reckless risk of that sort will be invited.

On the broad and high ground of the public good the closed shop is condemned by the appellate court. The system is declared to be in restraint of trade and against sound public policy. In this sense the ruling may have an important bearing on that most momentous issue of the times—the problem of curbing and regulating the great industrial trusts or monopolies. Judge Adams places "the union labor trust" on the same plane with the industrial trusts as an agency whose inevitable tendency is to restrain trade. His opinion on this interesting point is emphatic and leaves not a single loophole of escape for the labor union system placed under the ban.

It is one of the first great judicial opinions, if not the very first, in which union labor is pronounced a "trust in restraint of trade." With inexorable logic the jurist shows how the closed-shop agreement demanded by union labor is in its essence a trust and tends to create an illegal monopoly in favor of one class of workmen—the members of labor unions.

WHY THE CLOSED-SHOP CONTRACT FAILS.

Inasmuch as no citizen may lawfully bind himself by contract never to do any work of any kind during his lifetime, neither can he contract or conspire to keep others idle for all time unless they do a certain thing to please him—join a labor union. He may individually deny work to nonunion working people, but he cannot legally contract to deny work to any particular worker or class of workers. Should he do anything of the sort he would be guilty of an unlawful conspiracy—a conspiracy in re-

straint of trade and subversive of sound public policy—and he is liable to be punished as one of a despotic band of conspirators and ostracisers.

Eminent lawyers in practice at the local bar have held for some time that the "closed shop" contract of the labor unions was a violation of the common law and the civil code as well as the criminal statutes. It was so held in a sensational opinion delivered some months ago by the law firm of Moran, Mayer & Meyer to the Illinois Manufacturers' association. It was so maintained in the brief of Tenney, Coffeen & Harding, Allen & Wesemann and James H. Wilkerson submitted to the appellate court in the famous Kellogg strike case—that case that has just been decided against the "closed shop" in the opinion of Judge Adams.

All the law of the subject has been presented in the great argument compiled by Attorneys Tenney and Wilkerson. The appeal was from the injunction granted by Judge Holdom against the strikers at the plant of the Kellogg Switchboard Company.

For the strikers Attorney Clarence S. Darrow submitted a brief which the court has quoted "as illustrative of their view of the case," as follows:

"How do picketing, patrolling or even slugging affect property rights except in the most fantastic sense? Injury to business has no independent existence whatever, because business has no tangible existence to be injured in the true and unperverted sense."

But the court very promptly rejects and scouts Mr. Darrow's fantastic interpretation of the law, citing against counsel as "elementary principles" that "a man's business is his property" and "that the freedom of business action lies at the foundation of all commercial and business enterprises."

TEXT OF THE OPINION.

The gist of Judge Adams' opinion is contained in the following synopsis copied from the records of the appellate court:

"In the present case we think the petitions amply sufficient; that it is not necessary that one shall be a party to the bill or officially served with the writ in order for him to be bound by the injunction, but only that he shall have actual notice of it. It is contended that the contempts are criminal and appellants should have been discharged on their answers. The relief sought is a permanent injunction and preliminary thereto a temporary one of the same character as the permanent one prayed. Manifestly the preliminary injunction is for the benefit of the complainant and therefore its enforcement is for its benefit.

"The injunction and its enforcement, being for the complainant's benefit, the proceedings must be regarded as civil. Appellant's counsel object to the overruling by the court of motions for bills of particulars and to a hearing on affidavits instead of calling witnesses and examining them in open court. It was clearly a matter within the discretion of the court as to whether or not a bill of particulars should be ordered. And we are of the opinion that bills of particulars were unnecessary to enable appellants to prepare their defense, as the affidavits setting forth the facts are made a part of the informations. Defendants admitted that they were picketing complainant's place of business and interferng with its employes and with persons seeking employment with it, notifying them of the strike and persuading the former to leave its employ and the latter not to enter it.

"Appellants deny that they used force, threats or intimidation of any sort and say they were peaceable and mildly persuasive. But the very presence of a large number of pickets, with the avowed purpose of preventing plaintiff's employes from remaining in its employ and of preventing those seeking employment from entering it was in itself intimidation. When a thousand laborers gather around a railroad track and say to those who seek employment they had better not, and that advice is supplemented every little while by a terrible assault upon one who disregards it, everyone knows something more

than advice is intended. It is coercion, force; it is the effort of many by the mere weight of numbers to compel the one to do their bidding.

SLUGGING AND THREATS BY PICKETS.

"The affidavits show that defendants picketed and patrolled around and about complainant's place of business, watching the streets, alleys and approaches thereto, daily shifting their positions; that they so stationed themselves that the complainant's employes were obliged to pass through their picket line; that their attitude was ugly and menacing such as to cause fear in the mind of an ordinary person. Complainant's employes and persons seeking employment were waylaid on their way to and from the factory; they were insulted and threatened and in numerous instances assaulted and beaten by the strikers, pickets and patrollers, and complainant's business was seriously and injuriously interrupted. All teaming and hauling of merchandise to and from complainant's factory was stopped.

"The purpose of the strike by complainant's employes and their prosecution of it, as described, was to compel the complainant to execute the agreements referred to and made a part of the bill. The drafts of agreements, three in number, purport to be with the different unions whose members were in complainant's employ. The draft of agreement with the Metal Polishers, Buffers, Platers, Brass Molders and Brass Workers' International Union of North America, International Union of Steam Engineers and International Brotherhood of Stationary Firemen contain the following:

"Article 1. The party of the first part hereby agrees to employ none but members of the aforesaid organizations or those who carry the regular working card of the said organizations, provided the various crafts will furnish such competent help as may be required by the party of the first part within twenty-four hours after notification.

"Art. 7. There shall be a steward for each craft in each factory appointed by the organization, whose duty it shall be to see that the men working in said factory belong to the organizations.

"Art. 8. It is hereby agreed by the party of the first part that the business agent of the party of the second part shall have the privilege of interviewing any member of the party of the second part in the offices of the party of the first part during business hours.

"Art. 10. A sympathetic strike to protect union principles shall not be considered a violation of this agreement.

"Art. 11. All the apprentices shall belong to the union and carry the working card of the organization.

"Art. 12. The number of apprentices not to exceed one for ten men or less of the different crafts."

"That the purpose of the strike was to compel the execution of the drafts of agreement is clear. It is averred in the sworn bill and deposed to in the affidavits of De Wolf, complainant's president; Kellogg, its secretary and treasurer, and Edwards, its superintendent, that business agents of the different unions called on complainant and insisted on its executing the agreements and that, when complainant's president refused, on the ground that the proposed agreements were unreasonable, it was threatened by one of said business agents that unless complainant would sign the agreements a strike would be called and that said business agents called a strike, in response to which about 500 of complainant's employes quit its employ. Appellant's counsel admit in their brief the purpose of the strike is to bring about the execution of the contracts, and at least three of the appellants so admit in their answers. It is unlawful to compel one to execute any contract. A contract executed under duress is voidable, and duress is present where a party 'is constrained, under circumstances which deprive him of the exercise of free will, to agree or to perform the act sought to be avoided.'

"Duress exists when a person is induced to perform an act to avoid a threatened and impending calamity. Especially was the purpose to compel complainant to execute the agreements in question an unlawful purpose. Article 1 of the agreement strikes at the right of contract and provides that complainant shall employ none but members of the several unions, thus discriminating in favor of one class of men and excluding all others. In

Matthews vs. The People, 202 Ill., 389, the court, discussing the constitutionality of the free employment agency act, says (page 401): 'An employer whose workmen have left him and gone on a strike, particularly when they have done so without any justifiable cause, is entitled to contract with other laborers or workmen to fill the places of those who have left him. Any workman seeking work has a right to make a contract with such employer to work for him in the place of any one of the men who have left him to go out upon a strike. Therefore, the prohibition contained in section 8 strikes at right of contract, both on the part of the laborer and of the employer. It is now well settled that the privilege of contracting is both a liberty and a property right. Liberty includes the right to make and enforce contracts, because the right to make and enforce contracts is included in the right to acquire property. Labor is property. To deprive the laborer and the employer of this right to contract with one another is to violate section 2 of article 2 of the constitution of Illinois, which provides that 'no person shall be deprived of life, liberty or property without due process of law.' It is equally a violation of the fifth and fourteenth amendments of the constitution of the United States. The provision embodied in section 8 'is a discrimination between different classes of citizens founded on no justifiable ground and an attempt to exercise legislative power in behalf of certain classes and against other classes, whether laborers seeking work or employers. It falls under the condemnation of the constitution.'

"The agreement in question would, if executed, tend to create a monopoly in favor of the members of the different unions, to the exclusion of workmen not members of such unions, and are, in this respect, unlawful. Contracts tending to create a monopoly are void.

"The legislature of the state cannot create a monopoly.

VIOLATED CRIMINAL CODE.

"The purpose of the strikers is in violation of the criminal code, which provides as follows:

Purpose to Enforce Closed Shop.

Sec. 158. If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing, by threats, suggestions of danger, or by any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months.

Sec. 159. If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200.

Not only was the purpose of the strike unlawful but the means used to achieve the unlawful purpose were unlawful. The means used were the acts heretofore mentioned, and thereby injury to the complainant's business. The appellants and their associates intended to stop the business of the complainant so far as they possibly could, and the evidence shows that they did stop it in great part to complainant's injury. The following is contained in the brief of appellant's counsel, which we quote as illustrative of their view of the cause: 'How do picketing, patrolling, persuading or even slugging affect property rights, except in the most fantastic sense? Injury to business has no independent existence whatever, because business has no tangible existence to be injured in the true and unperverted sense.'

BOOMERANG FOR ATTORNEY DARROW.

"In the case of the Union Pacific Railway Company vs. Ruef, cited by counsel for appellants, the court says: 'And that one's business is his or its property is likewise elementary and is conceded by all.'

"A man's business is his property. 'The freedom of business action lies at the foundation of all commercial and industrial enterprises.'

"We know of no well considered case, or, indeed, of any case, holding that a combination of persons to injure the business of another is not unlawful. That the appellants, and others associated with them, acted in concert, in unlawfully endeavoring to injure, and, in fact, injuring complainant's business for an unlawful purpose, is fully sustained by the evidence. They conspired, banded together, to effect the unlawful purpose, and by overt acts did all they possibly could to that end. It is not necessary to prove an express agreement between the appellants and those associated with them. It may be proved by circumstantial evidence.

"Each conspirator is responsible for the acts and declarations of every other conspirator in furtherance of the common purpose. The conspiracy originated simultaneously with the calling of the strike and continued until the filing of the last petition, July 14, 1902. It was a single conspiracy. And the court on the hearing of each of the second and third petitions did not err in hearing the prior evidence. The evidence was competent as tracing and showing the character of the conspiracy. It is an indispensable condition of the enjoyment by each citizen of the liberty and rights guaranteed by the constitution and laws that he shall respect and not unlawfully infringe upon the liberty or rights of any other citizen. This cannot be done with impunity."

Jail sentences and fines imposed by Judge Holdom on twenty-three of the strikers are upheld in the opinion. But in the case of one defendant, Mashek, the length of the jail sentence is reduced.

"Mashek was sentenced to the county jail for sixty days," says the opinion, "while Christensen was sentenced to be committed for only thirty days.

"We cannot find in the evidence any reason for this discrimination. Mashek is not shown to have been more guilty than Christensen. On the contrary, we think if

there was any difference in the guilt of the two Mashek was the less guilty. The judgment, therefore, in Mashek vs. The People, will be reversed and judgment will be entered here that Mashek be committed to the county jail, there to remain for thirty days, unless sooner legally discharged. In each of the other appeals, the judgment is affirmed."

It is likely that the case will go to the supreme court of Illinois on further appeal. But there is no chance for it to reach the highest tribunal of the nation, the United States supreme court, as no question of interstate commerce is involved.

"It is impossible to exaggerate the importance of this decision," said Horace K. Tenney, in an interview. "Judge Adams is one of the most eminent jurists on the bench, and I am confident his decision will be sustained in the state supreme court, to which the cases are likely to go on another appeal. Briefly, the grounds of the decision may be said to be that the closed-shop contracts are opposed to sound public policy, as well as the statutory and common law and the constitution of the state of Illinois. Why they are opposed to public policy is because they are agreements in restraint of trade. The reasoning and the law upon that point are clear and unmistakable. The strike was called to enforce the contracts submitted by the union for the closed shop. The union's representatives called upon the president of the company and produced the contract, demanding that he sign it on penalty of having a strike put in force in his establishment. He refused to sign and the strike was called. Thus the issue of the closed shop—excluding all but union men from the privilege of work in the Kellogg plant—was squarely presented to the court. And the court has squarely decided in favor of the open shop, which is the open door of trade and commerce in the nation. The closed shop is simply a boycott of workmen, and no court in this country has yet decided that before a man is eligible for work in a factory or store he must have a permit or union labor card from the officials

of certain organizations whose decrees have no binding force in law.

"A remarkable feature of the case was that Judge Adams held the closed shop contract to be a violation of the criminal as well as the civil code of the state of Illinois. On this point the decision is significant in that it provides the employers with a powerful weapon in future negotiations with labor leaders. It is now clear that by the very fact a labor leader or delegation of members from a union present a copy of a closed shop agreement for an employer's signature the person or persons doing such a thing are amenable to the criminal code and may be given a term in the county jail for the mere act of demanding or asking the employer's signature. It is, therefore, likely that no more will be heard of the presentation of agreements for closed shops, especially if Judge Adams' decision is affirmed in the court of last resort in Illinois."

EMPLOYERS' WEAPON OF DEFENSE.

"It is one of the most important decisions ever rendered in the courts of Illinois," said Attorney M. L. Coffeen. "It points out clearly wherein the operations of labor unions enter the domain of the criminal. It will be an unassailable barrier and protection for employers, as the terrorism of labor unions is directly rebuked by Judge Adams. It is not likely that the contract agreements for the 'closed shop' can survive this decision. The court holds that the closed shop is a crime. So the employer will have unanswerable reasons in future for refusing to become particeps criminis with labor union leaders in any agreement, oral, written or implied, for the maintenance of the closed shop anywhere in Illinois. It is no exaggeration to say that the opinion means the legal death of the closed shop and the triumph of the nonunion man's right to an open shop, where he may have an equal chance with the union worker to obtain and retain employment."

John M. Glenn, secretary of the Illinois Manufacturers' association, said: "It is an epoch-making decision and

may prove the most momentous ever delivered on an industrial question in any court of this country."

Attorney Azel F. Hatch, who recently won encomiums from a distinguished audience by a paper entitled "The Rights of the Nonunion Man," which he read before the Literary Society, discussed the decision as follows:

"The agreement which was submitted by the unions to the Kellogg Switchboard and Supply Company and which is commented upon in the opinion of Judge Adams in the case of Christensen vs. The People would have created a closed shop. This decision accordingly passes upon the legality of the closed shop and states very plainly and forcibly the law in relation to the closed shop.

"This decision not only is based upon the highest authority but it commends itself to the reason of every dispassionate and fair-minded person. The closed shop is simply an attempt to establish a local monopoly by excluding from the shop all persons not members of the union or unions there employed. It is clearly an illegal combination for the purpose of wrong and injury to others for the benefit of the members of the conspiracy, and is properly held to be unlawful and criminal. It follows as a natural consequence that any party to such a conspiracy, either as an employer or as an employe, is liable to criminal prosecution and punishment.

"The promulgation and enforcement of the principles laid down in this decision will be wholesome in many ways and will tend to put a stop to the violence and assaults upon nonunionists who are satisfied to labor upon the terms offered by the employers.

"Any combination of individuals for the purpose of injuring others or depriving them of their lawful right to contract or to engage in employment ceases to be an organization protected by the law and becomes a conspiracy as criminal as the Molly Maguires or Ku Klux Klan. The sooner such organizations are rooted out the better for the peace and security of the community."

CLOSED SHOP A CRIME, SAYS MR. MAYER.

"The exhaustive and able opinion of the appellate court, just rendered by Judge Adams, the presiding justice, should prove epoch-making," said Levy Mayer. "The opinion is a thorough and rugged review, both upon principle and authority, of one of the most important questions that have ever confronted the employer. It is the first opinion rendered in this state upon the question of the legality of a contract by which the employer agrees not to employ nonunion labor.

"All other economic and legal questions aside, it now becomes in this state a complete answer to the demand of the closed shop that the law stamps such an arrangement as a criminal conspiracy. It is elementary that the crime of conspiracy consists of a combination of two or more persons to effect an illegal purpose, either by legal or illegal means. The dispute has always been as to whether a contract not to employ nonunion labor is an agreement to effect an illegal purpose. It has been asserted over and over again by those advocating the closed shop that an agreement to employ only union labor is perfectly legal and binding.

"The courts have frequently heretofore held illegal an agreement among members of an association to withdraw their patronage from anyone who sold to one who was not a member of the association or an agreement which permitted members of an association to make purchases only from such as sell exclusively to members of the association. I have never been able to appreciate the distinctions which some courts have endeavored to make between cases of the kind I have indicated and cases where the right to employ nonunion labor was involved. There is no doubt that persons may combine for legitimate purposes and that an individual may refuse to deal with any particular person or class of persons and base such refusal upon mere whim or caprice, but it has been my opinion, and I am more than gratified to find it sustained by the appellate court, that a number of persons cannot combine with the object of compelling the adoption of a con-

tract which prohibits the employer from employing nonunion labor.

CONTRACT IS A CRIMINAL CONSPIRACY.

"If such a contract is entered into it is illegal and under the decision of the appellate court constitutes a criminal conspiracy, to which not only the union but the employer becomes a party and for which not only the employe but the employer is subject to fine or imprisonment in the penitentiary, or both, under our criminal statutes. There are a vast number of manufacturing concerns in this state that have written contracts with labor unions which prohibit the employment of nonunion labor. Under this decision of the appellate court many hundreds, if not thousands, of employers, as well as many thousands of employes, have thus deliberately become parties to a criminal conspiracy of which the contracts furnish the written and unanswerable proof. Where such arrangements exist the crime cannot be wiped out by the cancellation of the contracts, but a continued recognition of the binding force of such contracts, in the light of the recent decision of the appellate court, may create trouble of a kind little dreamed of by those who have permitted themselves to be forced or lulled into them.

"The fact that laborers have the right to refuse to work for a man who does not employ union labor, or in order to better their condition or advance their wages, does not authorize the making of a contract under which the employer is compelled to employ only union labor and to discharge nonunion labor. The rights of the employer and employe are, and should be, synonymous, but employes cannot, by combination or union, without committing the crime of conspiracy, force employers to agree to employ only union labor. When employers do become parties to such an agreement they are equally guilty of conspiracy.

"The opinion of the appellate court should be studied at once by every employer of labor in this state and when

the employer awakes to the situation that he is a party to a criminal conspiracy the floodgates will open and non-union labor will, I think, receive the protection that all of the injunctions and processes of the courts have heretofore been unable to give them."

Closed Shop Unlawful and Criminal.

Of all the court decisions affecting the right of contract none is of such vital importance to employers and employes as the one recently handed down by the appellate court of Cook county concerning what is known as the "closed shop" contract, for it goes to the very heart of the question out of which arises the chief contention between labor unions and employers.

The decision of the appellate court specifically declares that the parties to such contracts, if compulsion be used, are guilty of an unlawful act, and if entered into voluntarily are guilty of a criminal conspiracy. These declarations are based upon the accepted principles of common law, the guarantees of the state and the national constitution and the specific language of the criminal statutes.

Under the law of contracts it is not only unlawful to compel one to execute a contract, but a contract executed under duress is voidable. Such is the nature of most of the "closed shop" contracts, for, although the employer apparently may exercise free will, the fact remains that the majority of closed shop contracts are executed to avoid a strike or to end one already existing, and the court declares that "duress exists when a person is induced to perform an act to avoid a threatened and impending calamity."

The "closed shop" contract is in itself a denial of freedom of contract both to employers and to nonunion workmen and therefore a violation of fundamental law. Freedom of contract has been defined by the supreme court of the state as both a liberty and a property right. Labor is declared to be property, and, therefore, to deprive the laborer and employer of this right to contract with one

another is held to be a violation of section 2, article 2, of the constitution of Illinois, which provides that "no person shall be deprived of life, liberty or property without due process of law." The labor unionists have the same freedom of contract as any other persons, but when they enter upon a contract for a "closed shop" they attempt to deprive all who may not be members of unions of the same right, and therefore are guilty of an unlawful act.

The "closed shop" contract, according to the supreme court decision to which the appellate judges refer, is equally a violation of the provisions of the constitution of the United States guaranteeing "life, liberty and property," as in the Illinois constitution, together with the further guarantee that the privileges shall never be abridged, and prohibiting discriminations between citizens.

As the legislature of the state is powerless under the constitution to create a monopoly, it must be apparent that the labor unions cannot exercise such power, and therefore the declaration of the appellate court that the closed shop agreements tend to create a monopoly in favor of union labor, and hence are unlawful and void, impresses one as obviously true and legally sound.

The constitutional provisions and general principles of law enunciated in the foregoing have to do with the unlawful acts of the parties to the closed shop contract and the illegality and invalidity of such an agreement. The criminal statute governing the offense is not less explicit. Where two or more persons combine by unlawful means to prevent any person from obtaining employment section 158 of the criminal code provides both a fine and imprisonment.

Under this law, as interpreted by the decision, employers and labor unionists who have entered into an agreement for a "closed shop" are guilty of an unlawful act, which, if voluntarily performed, constitutes a criminal conspiracy. Neither employers nor labor unionists who hereafter enter into agreements for a "closed shop" can plead ignorance of their legal rights in palliation. If the

employer be coerced he is nevertheless guilty of an unlawful act for which there are ample remedies at law; if he voluntarily enters into such a contract he can be prosecuted under the criminal statutes.

The "closed shop" is the crux of the whole labor union situation. It is not a subject for legislation to be made the shuttlecock of vociferous demagogues, but one to be dealt with by the dispassionate judgment of the courts. The beginning made by the appellate court of Cook county is an indication that the question will be determined in accordance with the established principles of justice and right. There is every reason to believe that the supreme court will take the same view of "closed shop" contracts as that held by Judges Adams, Windes and Ball of the appellate court, for the latter are all men of long judicial experience and of able and temperate judgment.

Moreover, the decision of the appellate court rests in part upon a decision of the supreme court and there is no utterance of the appellate court at variance with that decision.

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